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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES, LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**APPELLANTS' STATEMENT OF ISSUES TO BE PRESENTED  
ON APPEAL AND DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, the Appellants listed on Exhibit A submit their statement of issues presented and designation of record with respect to their appeal from the Stipulated Order Denying Various Avoidance Defendants' Intervention Request Relating to the Trustee's Time-Based Damages Motion, so-ordered by the Honorable Burton L. Lifland, U.S.B.J., and entered in the above-captioned proceedings on February 5, 2013 [ECF No. 5224] (the "Order"). The Trustee has commenced adversary proceedings against Appellants, in which he asserts avoidance claims and employs a "Net Equity" claim calculation methodology to determine the amount of each avoidance claim. Appellants did not file SIPA claims in the underlying main proceeding.<sup>1</sup> In the underlying proceeding, Appellants sought to be heard on the Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time Based Damages ("the Motion"), which seeks to reject an inflation or constant dollar adjustment to the calculation of "Net Equity" in the SIPA claim context.

**Statement of Issues Presented on Appeal**

1. Whether the Bankruptcy Court improperly denied Appellants' right to be heard on the Motion where the Trustee's position (not yet decided) is that the Appellants' liability in the adversary proceedings may be determined in part by the "Net Equity" claim calculation methodology approved for SIPA claims?
2. Where prior orders of the District Court in the Trustee's pending avoidance proceedings against related defendants left for Bankruptcy Court determination the issue of whether there

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<sup>1</sup> Two of the Appellants, MBE Preferred Limited Partnership and SEW Preferred Limited Partnership, did file claims in the underlying proceeding but did not object to the Trustee's adverse determination of the claims they did file.

should be a constant dollar adjustment to the Net Equity computation, did such orders confer on the Appellants a right to be heard on the Trustee's Motion before the Bankruptcy Court?

3. In denying the Appellants' request for intervention, did the Bankruptcy Court violate the Appellants' rights under the Due Process clause of the Fifth Amendment of the United States Constitution to be heard at a meaningful time on an issue material to their respective adversary proceedings?

4. In denying the Appellants' request for intervention, did the Bankruptcy Court exceed its authority insofar as it purported to adjudicate the rights of Appellants in the pending adversary proceedings, in contravention of Article III of the United States Constitution?

**Designation Of Items To Be Included In The Record On Appeal<sup>2</sup>**

The Appellants submit the items below for inclusion in the record on appeal.

**A. Motion Papers, Order, and Notice of Appeal [in Case No. 08-1789 (BRL)]**

<b>Item #</b>	<b>Filing Date</b>	<b>Docket #</b>	<b>Docket Text</b>
1.	12/07/2012	5141	Letter to Judge Lifland filed by Richard A. Kirby on behalf of Estate of Doris M. Pearlman, et al.
2.	01/03/2012	5184	Letter /Trustee's Letter Response to Non-Claimants' Request To File Motion to Intervene In Trustee's Time-Based Damages Motion filed by David J. Sheehan on behalf of Irving H. Picard.
3.	01/03/2012	5185	Memorandum Endorsement Order signed on 1/3/2013
4.	2/5/2013	5224	Stipulated Order Denying Various Avoidance Defendants' Intervention Requests Relating to the Trustee's Time-Based Damages Motion
5.	2/15/2013	5236	Notice of Appeal

**B. Related documents Filed in Case No. 08-1789 (BRL)**

<b>Item #</b>	<b>Filing Date</b>	<b>Docket #</b>	<b>Docket Text</b>
1.	12/11/2009	1052	Memorandum of Law of the Securities and Exchange Commission Supporting Trustee's Determination that Net Equity Should Not be Based on Securities Positions Listed on Last Statements, and Supporting in Part Trustee's Determination that Net Equity Should be Based Upon Amounts Deposited Less Amounts Withdrawn

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<sup>2</sup> Each of the documents identified includes all exhibits, attachments, appendices and other documents attached thereto.

2.	07/17/2012	4920	Notice of Motion to Set Hearing / Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims
3.	09/05/2012	5022	Scheduling Order
4.	10/12/2012	5036	Memorandum of Law of the Securities Investor Protection Corporation in Support of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages filed by Josephine Wang on behalf of Securities Investor Protection Corporation.
5.	10/12/2012	5038	Motion to Approve / Notice of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages
6.	10/12/2012	5039	Memorandum of Law / Memorandum of Law in Support of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages
7.	10/12/2012	5040	Declaration / Declaration of Bik Cheema in Support of The Trustee's Motion for an Order Affirming The Trustee's Calculation of Net Equity and Denying Time-Based Damages
8.	10/12/2012	5041	Declaration / Declaration of Robert J. Rock in Connection with The Trustee's Motion for an Order Affirming The Trustee's Calculation of Net Equity and Denying Time-Based Damages

9.	10/12/2012	5042	Affidavit of Service of Notice of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages; Memorandum of Law in Support of Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages; Declaration of Bik Cheema in Support of The Trustee's Motion for an Order Affirming The Trustee's Calculation of Net Equity and Denying Time-Based Damages; and Declaration of Robert J. Rock in Connection with The Trustee's Motion for an Order Affirming The Trustee's Calculation of Net Equity and Denying Time-Based Damages
10.	12/03/2012	5133	Opposition Brief Customers' Brief Opposing Trustee's Motion for an Order Rejecting an Inflation Adjustment to the Calculation of "Net Equity"
11.	12/03/2012	5134	Affidavit Declaration of P. Gregory Schwed in Support of Customers' Brief Opposing Trustee's Motion for an Order Rejecting an Inflation Adjustment to the Calculation of "Net Equity"
12.	12/07/2012	5140	Amended Declaration of Helen Davis Chaitman in Support of Customers' Objection to Trustee's Motion for an Order Denying Time-Based Damages
13.	01/17/2013	5202	Notice of Appeal

**C. Transcripts in Case No. 08-1789 (BRL)**

Item #	Filing Date	Docket #	Docket Text
1.	09/05/2012	5024	Transcript regarding Hearing Held on 09/05/2012 10:04AM RE: Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims.

**D. Documents Filed in Picard v. Pearlman, SDNY Bankruptcy Case No. 10-4504 (BRL)**

Item #	Filing Date	Docket #	Docket Text
1.	09/05/2012	1	Complaint against NTC & Co. LLP, as former custodian of an Individual Retirement Account for the benefit of Doris M. Pearlman, Doris M. Pearlman

**E. Documents Filed in Picard v. Kenneth L. Evenstad Revocable Trust u/a/d May 2, 2000 et al., S.D.N.Y. Bankruptcy Case No. 10-4342 (BRL)**

Item #	Filing Date	Docket #	Docket Text
1.	11/30/2010	1	Complaint against Kenneth L. Evenstad Revocable Trust u/a/d May 2, 2000 <i>et al.</i>

**F. Documents Filed in Picard v. Ambassador Shoe Corporation, S.D.N.Y Bankruptcy Case No. 10-4340 (BRL)**

Item #	Filing Date	Docket #	Docket Text
1.	11/30/2010	1	Complaint against Ambassador Shoe Corporation

**G. Documents Filed in Picard v. Gorvis LLC et al., S.D.N.Y Bankruptcy Case No. 10-4544 (BRL)**

Item #	Filing Date	Docket #	Docket Text
1.	12/1/2010	1	Complaint against Gorvis LLC, a California Limited Liability Company <i>et al.</i>

**H. Documents Filed in Picard v. Blue Star Investors, LLC C/O Thomas H. Lee Capital, LLC et al., S.D.N.Y Bankruptcy Case No. 10-4347 (BRL)**

<b>Item #</b>	<b>Filing Date</b>	<b>Docket #</b>	<b>Docket Text</b>
1.	11/30/2010	1	Complaint against Blue Star Investors, LLC C/O Thomas H. Lee Capital, LLC, Thomas H. Lee

**I. Documents filed in District Court consolidated proceedings, Civil Action No. 12-mc-0115 (JSR)**

<b>Item #</b>	<b>Filing Date</b>	<b>Docket #</b>	<b>Docket Text</b>
1.	07/25/2012	252	Trustee Memorandum in Opposition to Consolidated Motion on Antecedent Debt

**J. Related Documents Filed in Picard v. Katz, SDNY Case No. 11-3605 (JSR)**

<b>Item #</b>	<b>Filing Date</b>	<b>Docket #</b>	<b>Docket Text</b>
1.	12/06/2011	75	Reply Memorandum of Law re: 72 Order, 73 Memorandum of Law - Trustees Reply to Amicus Brief on Reset to Zero Methodology.

Dated: February 28, 2013  
New York, New York

Respectfully submitted,

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